

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, July 28, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Russ Bayer, Steve Duvall, Gerry Krieser, Greg Schwinn, Cecil Steward, Rick Wallace and Joe Wilson (Ann Bleed and Barbara Hopkins absent); John Bradley, Ray Hill, Mike DeKalb, Steve Henrichsen, Jennifer Dam, Jean Walker and Missy Minner of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Vice-Chair, Russ Bayer called the meeting to order and requested a motion approving the minutes for the meeting held July 14, 1999. Motion to approve made by Duvall, seconded by Wallace and carried 7-0: Bayer, Duvall, Krieser, Schwinn, Steward, Wallace and Wilson voting 'yes'; Bleed and Hopkins absent.

The Commission then presented a Resolution of Appreciation to Jerry McGinn, former Director of Building & Safety. Mr. McGinn gave comments and expressed appreciation for the opportunity to work with this community. He has enjoyed the 36 years that he has spent with the City and the last 10 years as the Director of the Department of Building and Safety.

Resolution of Appreciation No. PC-00515 passed unanimously.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

July 28, 1999

Members present: Bayer, Duvall, Krieser, Schwinn, Steward, Wallace and Wilson; Bleed and Hopkins absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3197; COUNTY SPECIAL PERMIT NO. 170, HILLTOP ESTATES COMMUNITY UNIT PLAN; COUNTY PRELIMINARY PLAT NO. 99018, HILLTOP ESTATES 1ST ADDITION; PRE-EXISTING USE PERMIT NO. 3Y; SPECIAL PERMIT NO. 1502A; FINAL PLAT NO. 99012, VAVRINA MEADOWS ADDITION; and FINAL PLAT NO. 99018, MUFF 2ND ADDITION.**

Item No. 1.2a, County Special Permit No. 170, and Item No. 1.2b, County Preliminary Plat No. 99018, were removed from the consent agenda and scheduled for separate public hearing due to letters received in opposition.

Duvall moved to approve the remaining Consent Agenda, seconded by Krieser and carried 7-0; Bayer, Duvall, Krieser, Schwinn, Steward, Wallace and Wilson voting 'yes'; Bleed and Hopkins absent.

Note: This is final action on the Vavrina Meadows Addition Final Plat No. 99012 and Muff 2nd Addition Final Plat No. 99018, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COUNTY SPECIAL PERMIT NO. 170,
HILLTOP ESTATES COMMUNITY UNIT PLAN
and
COUNTY PRELIMINARY PLAT NO. 99018,
HILLTOP ESTATES 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 82ND STREET AND PELLA ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 28, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer; Bleed and Hopkins absent.

Planning staff recommendation: Conditional approval.

These items were removed from the Consent Agenda and scheduled for separate public hearing.

Mike DeKalb of Planning staff submitted two letters in opposition with concerns about water drainage; the well water now has an odor--there will be more problems with water in basements if there are more houses; the ground is not safe for living conditions due to abundance of fill.

Mr. DeKalb also submitted a letter from Trev Peterson, attorney, on behalf of Burlington Northern and Sante Fe Railroad, with concerns about potential drainage. The property is generally higher and more level than it was naturally. Burlington Northern and Sante Fe are concerned about the development if it should remove the berm or let-down structures. They are concerned about water entering the railroads' right-of-way. No net additional runoff is the condition that should be required. Mr. Peterson requested that the developer be required to address the drainage issues before it becomes a drainage problem.

Proponents

1. **Brian Carstens** presented the application on behalf of **Bill Carlson**. This is a community unit plan in the AG zoning district, which district allows one dwelling unit per 20 acres; they will also receive a 20% density bonus by clustering and preserving open space. This is a straight forward application.

With regard to the concerns raised by the railroads, Mr. Carstens believes that Burlington Northern had filled the property with 12-15 feet of fill in some areas when they widened and made the double tracks. This developer did do some soil testing and it was found acceptable to place structures on the controlled fill. This developer also checked with Terracon regarding potential water flow underneath 82nd Street and they said it is not entirely inconceivable, but the water is draining toward the track. It was suggested that subsurface water should be coming out towards the railroad tracks and not towards the west.

As far as well water, Mr. Carstens advised that Vince Dreezen is on vacation and could not be reached to address the concern about the amount of fill and the effect on the well water.

As far as the Burlington Northern comments, Mr. Carstens also stated that this development is not directing any more water towards the tracks than naturally goes there today. There is no substantial additional water being developed by acreages being placed on the southern portion of the lot. They will not be grading in the areas of the drop structures. They will leave the dike alone. Most of the Burlington Northern issues have been addressed in the CUP. This development will not divert any more water on Pella Road than what exists today.

Wallace inquired whether the developer would have any problem with the provision for no net additional runoff. Mr. Carstens stated that this developer believes they have already done this and they do understand the concept.

Steward asked whether the developer believes the railroad concerns can be resolved. Mr. Carstens' response was that the developer has already started grading the roads, but they are willing to work with Burlington Northern. Mr. Carstens was not aware of

these concerns before yesterday.

Opposition

1. **Bob Cannon**, 1000 NBC Center, attorney, appeared on behalf of Burlington Northern and Sante Fe Railroad. The railroad tracks do run in a cut on the east side of this property. The drainage structure that was put in place when those tracks were built was a fairly complicated system and so long as that system stays in place and the flow of water that goes toward that system doesn't change, it should work. But when the railroad became aware of the development and looked at the plans, they became concerned about the possibility that at some point in the future one of the landowners might decide to put a cut in one of those dikes, or change the detention pond, etc., which could change the volume and velocity of water going toward this complicated set of structures. They want to avoid this problem now rather than fix it later. When the County Engineer asked for a requirement on this application that there be no additional flow of water into the ditches of Pella Road on the south, he believes it was a recognition that there was something about this development that could change drainage and impact the railroad structure. The railroad is not opposed to the project but wants to make sure these concerns are addressed.

Mr. Cannon requested a deferral to work with the staff and the applicant.

Mr. Cannon further explained that the water flows generally to the east; there is a berm along the east side and there is a holding cell in the corner with pipes that go down into the cut. All along the cut are a series of stepdowns, and in several places there are additional pipes that go through so that the whole structure works together as a unit to control the volume and amount of water that goes down to the wash-out. There is not a detention pond system in this development that will keep that volume at that level.

Mr. Cannon acknowledged that the ground was raised and made more level with some of the dirt that came out of the cut. Schwinn wondered why this concern was not dealt with when the railroad did the ditch. Mr. Cannon submitted that it was dealt with for agricultural usage. It handled the rains we had this spring as cropland.

But once you start putting in houses and roads, with individual landowners who want to regrade their acreage, Mr. Cannon believes the dike may be cut and that would result in a problem. There is nothing in the permit for this protection. Mr. Cannon is hopeful that they can work this out.

Response by the Applicant

Mr. Carstens stated that the developer is willing to take two weeks and work through

the issues with Burlington Northern.

Duvall made a motion for continued public hearing and administrative action on August 11, 1999, seconded by Wallace and carried 7-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer voting 'yes'; Bleed and Hopkins absent.

CHANGE OF ZONE NO. 3194
TEXT AMENDMENT TO THE LINCOLN MUNICIPAL CODE
TO INCREASE FILING FEES FOR LAND DEVELOPMENT,
SUBDIVISION AND ZONING ACTIONS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 28, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer; Bleed and Hopkins absent.

Planning staff recommendation: Approval.

Proponents

1. John Bradley, Interim Planning Director, requested a two-week deferral to properly advertise the amendments to Chapter 26. These amendments are included in the staff report but were not advertised.

Mr. Bradley pointed out that the proposed increase in fees is also funding 1/4 of a Health Dept. position for plan review. Mr. Bradley then discussed the need for additional staff and the work program facing the Department. The new Director of Planning will be faced with the 5-year update of the Comprehensive Plan. There will be a lot of long range planning going on over the next two years in particular.

Mr. Bradley has heard verbal comments such as, "Can't you just work smarter instead of having more staff", e.g. the Wilderness Park citizen group having four staff members in attendance. Mr. Bradley agreed that the Wilderness Park study is an unusual dedication of staff time, but because of the detail of the comments and questions on hydrology, ecology and traffic concerns, he has had those staff members who are each experts in those areas attend as well as the project manager, Mike DeKalb, along with Kent Morgan who is Mr. DeKalb's supervisor.

Steward asked Mr. Bradley to discuss the percentage increases being proposed and the rationale therefor. Why this number and not some other number? Mr. Bradley explained that he took the 97-98 fiscal year, which was a typical year in terms of development activity, and calculated the fees collected. He then calculated what it would take in an increase to those fees to add salary and benefits for the two positions. This was at the direction of the City Council. He did allow for the 20% being paid by the County. These fee increases are only proposed at this time for the City. The County

is going to consider pursuing fee increases as well.

Steward asked Mr. Bradley to estimate what percentage of the staff is being paid by fees in total, not just the two new proposed positions, as opposed to general revenue. Mr. Bradley offered to provide this at the next meeting.

Steward thinks it would be helpful from a public interest point of view to know what percentage of the Planning Dept's effort is allocated from the direct results of growth and development as contrasted to maintenance of the city enterprise in a normal status quo. Mr. Bradley noted that the Planning Department has a higher operating expense in salary and benefits than could come close to being reflected in the fees collected.

There was no testimony in opposition.

Steward moved for continued public hearing and administrative action on August 11, 1999, seconded by Krieser and carried 7-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer voting 'yes'; Bleed and Hopkins absent.

CHANGE OF ZONE NO. 3129
FROM R-3 RESIDENTIAL TO O-3 OFFICE PARK
and
USE PERMIT NO. 121
FOR A MEDICAL OFFICE BUILDING
ON PROPERTY GENERALLY LOCATED
AT SOUTH 77TH STREET AND PIONEERS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 28, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer; Bleed and Hopkins absent.

Planning staff recommendation: Denial of the change of zone; conditional approval of the use permit if the change of zone is approved.

Proponents

1. **Mike Rierden** appeared on behalf of **Lincoln Federal and Radiology Associates**, and submitted a packet of background information. Mr. Rierden pointed out that the Planning Commission recommended approval of this change of zone to O-3 back in September. The only reason it is being reviewed again is because of a new legal description. Willow Sprigs is across the street; to the east is Antelope Commons; to the west is Nebraska School of Gymnastics and Lennox Village; and Lennox Square is on the corner, so there is already a considerable amount of commercial office space in the area.

Mr. Rierden believes the change of zone is a legitimate request and is supported by the uses in the area. The property owner to the south, Lincoln Federal, has submitted a plat and they would be the most impacted by this project.

Mr. Rierden agreed with all conditions of approval on the Use Permit except #2.1.3 which they would request be modified. This condition requires sidewalks along Pioneers Blvd. at the time of the construction of the project. The applicant would rather that the sidewalks be constructed after the improvements in Pioneers Boulevard are installed so that they don't put the sidewalks in and then have to tear them out for the widening of Pioneers.

Mr. Rierden also requested that Condition #2.1.7 be deleted, which requires that the grading plan be revised to show no fill within the limits of the 100 year floodplain. This is the only issue in this project. On the south edge of the parking lot is an area of the parking lot that is going into the floodplain. Three times in the past, the 176 elevation was approved. The applicant is requesting that at this point in time to reduce the amount of fill to 173, which is floodplain elevation. This is a safety matter more than anything else. Antelope Creek in this area is narrow and it fills quickly. They wish to be able to get that portion of the parking lot out of the floodplain area because of the rapid rise in the waters in this area. The applicant will agree to lower from 176 to 173 floodplain elevation.

Mr. Rierden proposed new language for Condition #2.1.3, such that the sidewalks along Pioneers Boulevard be constructed within 12 months of the completion of improvements to Pioneers Boulevard.

Mr. Rierden clarified that the only reason the change of zone is back before the Commission is because when he went to the City Council, they wanted to see the use permit along with the change of zone and they put the change of zone on pending at Council. When Ray Hill was reviewing the change of zone after submittal of the use permit, he discovered that the legal description for the original change of zone and the use permit description did not match. The change of zone is coming back with the new legal description.

2. A Representative of Design Build, who is developing the Imaging Center, submitted a reduced copy of the elevations and the floor plan of the facility. It will be a 24,000 sq. ft. one-story structure for the purpose of patients coming in and getting x-rays and that is the sole purpose. The building will be done in two colors of brick. The east elevation will face East Hill Drive and the north elevation will face Pioneers Blvd. It is of steel frame construction with brick veneer on stud footings.

There was no testimony in opposition.

Steward noted that it looks as though this puts 15 parking spaces into the floodplain area. Ray Hill of Planning staff explained that the application had the minimum number of spaces required for this size of lot. Steward questions in this situation, with the safety issue and environmental issue, whether we might not be willing to waive the parking requirement as opposed to force a condition that may not be totally safe or totally environmentally adequate for the particular circumstance. Mr. Hill explained that if the parking lot is at the 100 year floodplain elevation, then there would be no flood water on the parking lot, so there would still be no storage of stormwater on the parking lot itself. We have many floods that do not reach the 100 year floodplain elevation (and Steward commented that we could have some that go beyond that). Steward just wonders whether there are trade-offs so that we can be more flexible on our requirements. Mr. Hill suggested that the chances of a 100 year flood is 1% in one given year that it would happen. Staff believes that the chance of a 50 year flood is more often. Staff's concern is that it is important to reserve that storage space for stormwater for its impact upon Antelope Creek.

Bayer wondered whether it would be better to cut 15 parking spaces and not go into the floodplain. Mr. Hill pointed out that this application is at the minimum number of spaces required for this size of building. If they reduce the parking spaces, they will have to reduce the size of the building. Mr. Hill does not believe they should give up the 15 parking spaces because our parking requirements are not fulfilling the needs of many of the projects, including medical office buildings. Staff is opposed to deleting Condition #2.1.7. Staff believes that the storage is important.

Response by the Applicant

Mr. Rierden agreed that the applicant would not want to eliminate parking stalls because they are at the minimum requirement. The Imaging Center is not the typical medical office facility. It does generate traffic but not as much as a typical medical office. Under the subdivision requirements, if they were building something of a residential basis on this lot, they would be required to have everything on the lot out of the floodplain, whether it be parking, driveways or whatever.

Bayer suggested putting the parking in the green area shown on the map. Mr. Rierden stated that area to be for future expansion for the medical facility. If they built the parking lot there, they would be right back into the question of putting the parking stalls to the south if they ever expand into that area. Bayer does not believe they have room for expansion anyway.

Rick Henderson, head of Civil Engineering for HBE, stated that the future expansion would include any parking required in the expansion area itself.

Public hearing was closed.

CHANGE OF ZONE NO. 3129

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 28, 1999

Duvall moved approval, seconded by Wilson, and carried 6-1: Wilson, Schwinn, Wallace, Krieser, Duvall and Bayer voting 'yes'; Steward voting 'no'; Bleed and Hopkins absent.

USE PERMIT NO. 121

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 28, 1999

Schwinn moved approval, with conditions, seconded by Wallace.

Steward's original concern on this application (which he voted in favor of at that time without seeing the project) has been reinforced by this design. What we're wanting to prevent is Pioneers Boulevard from becoming a strip commercial thoroughfare. Except for the drop-off canopies, he believes this looks very much like strip commercial development with the flat roof and adjacency to a residential area and he believes it is very insensitive to the community and the particular location. On the basis of what has been submitted, he cannot support the project.

Bayer moved to amend to amend Condition #2.1.3 as requested by the applicant, seconded by Wilson and carried 6-0: Wilson, Schwinn, Wallace, Krieser, Duvall and Bayer voting 'yes'; Steward abstaining; Bleed and Hopkins absent.

Wilson moved to amend to delete Condition #2.1.7, seconded by Duvall. Wilson does not think this is going to make any difference with regard to the floodplain. Motion to delete Condition #2.1.7 failed 3-3: Wilson, Duvall and Bayer voting 'yes'; Schwinn, Wallace and Krieser voting 'no'; Steward abstaining; Bleed and Hopkins absent.

Main motion for conditional approval, with amendment to Condition #2.1.3, carried 6-1: Wilson, Schwinn, Wallace, Krieser, Duvall and Bayer voting 'yes'; Steward voting 'no'; Bleed and Hopkins absent.

Note: This is final action on Use Permit No. 121, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 381A

**FOR WIRELESS COMMUNICATION AND
EQUIPMENT ON PROPERTY GENERALLY
LOCATED AT NO. 46TH AND Y STREETS.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 28, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer; Bleed and Hopkins absent.

Planning staff recommendation: Deferral for two weeks in order to do proper advertising.

There was no testimony in support or opposition.

Wallace moved to defer for two weeks, with continued public hearing and administrative action scheduled for August 11, 1999, seconded by Duvall and carried 7-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer voting 'yes'; Bleed and Hopkins absent.

SPECIAL PERMIT NO. 1784

ON-SALE LIQUOR AT

6801 WILDCAT DRIVE

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 28, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer; Bleed and Hopkins absent.

Planning staff recommendation: Denial.

Rick Houck of Planning staff submitted a letter from Whitehead Oil requesting additional information from the Police Department as to where they obtained their information and allegations about local people not using this facility and other information to support their rationale for denial.

Proponents

1. Mark Whitehead, President of Whitehead Oil, testified in support. Whitehead Oil has been working on this development for about 10 years now. Two of the sites are up and running--Cracker Barrel immediately to the south and then Red Roof Inn. Everything indicates that the Cracker Barrel has been doing extremely well at this location. Mr. Whitehead is proud of this location for other reasons, also. They started with 160 acres and narrowed it down to 6 sites. He has donated 100 acres of pastureland to the Lower Platte South NRD to put it back into the original saline wetlands, which is a great example of business and environmental interests working hand-in-hand together.

Specifically, Mr. Whitehead pointed out that all conditions for this special permit were met for this particular site and no waivers are requested. Mr. Whitehead referred to the Police Department comments and indicated that he talked with Sgt. Sherrill, who did not fully realize that his comments came out in opposition to the special permit. Mr. Whitehead stated that they do anticipate that the citizens of this community will use this facility as opposed to only those traveling on the Interstate. On other projects in this area, it has been projected that 90% of their customer base will be coming from the south (the City). The more logical split is probably about 50/50 in terms of business off the interstate and business from the city. Cracker Barrel is currently located in H-1 and that is the split they are receiving now. Clearly, off-sale liquor is not the main source of alcohol problems as measured by DWI citations. The neighbors immediately to the south have already developed 500-1300 dwelling units which would support about 3,000 people in that area. Mr. Whitehead expects a mixed use out of this project. When they asked for the inclusion of alcohol in H-1, to say that an interstate location caters to interstate traffic to the exclusion of any other patron is ridiculous. Basically, the H-1 zoning allows a high-rise sign. That's all it does. Mr. Whitehead believes his business has an excellent record with alcohol management so far. He is excited about the way they plan to manage this site. They have new software to more responsibly card for cigarette and alcohol sales and those sorts of issues.

There was no testimony in opposition.

Wilson noted that the Planning Commission rarely has the opportunity not to approve these types of special permits where the minimum standards are met. How is this one different? Rick Houck of Planning staff stated that the Planning Department has always been in opposition to having off-sale allowed in the H-1 district. It was intentionally left out of the ordinance; then inadvertently put back in; and then removed again in 1997. While staff believes the liquor special permit may be appropriate in most districts, it is not appropriate in the H-1. The H-1 district is intended to serve the highway traveler. It may have expanded in its use but we originally only found H-1 zoning around the interstate interchanges. H-1 is just about our smallest zoning district. Admittedly, it has expanded with the development of North 27th Street, but staff has continually stood behind the idea that H-1 is not an appropriate district for off-sale liquor.

The Cracker Barrel does not sell alcohol.

Steward inquired as to the nearest liquor license establishment on No. 27th Street. Rick could not think of any other than Sam's Club, Super K-Mart, and the new Applebee's on No. 27th Street.

Bayer does not believe the Planning Commission can deny the application based on the Police Department report.

Rick Peo, City Attorney's office, stated that in this case he disagrees with the staff. The

zoning district allows the use by special permit. The issue of appropriateness has already been resolved if the conditions are met. With the conditions being met, normally it should be approved. There is one issue as to the appropriateness of the driving public from the interstate, which is more of a district need rather than a special permit condition. He does not think there is a legitimate basis at this point to deny the application when all the criteria has been met. There is no documentary evidence to support the Police Department allegations.

Response by the Applicant

For comparison, Mr. Whitehead stated that he asked Sgt. Sherrill for the history of the Airport Interchange where there is alcohol available and Hwy 77 and he indicated that it is very difficult to measure and could not cite it specifically. Mr. Whitehead also noted that there are three competitors listed on the blue signs which sell alcohol, i.e. AMOCO next to McDonald's and Gas N Shop. TEXACO is still on the blue sign but they do not have alcohol at that location. Mr. Whitehead believes Whitehead Oil can do a good and responsible job of marketing.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 28, 1999

Wilson moved approval, seconded by Wallace and carried 7-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer voting 'yes'; Bleed and Hopkins absent.

COUNTY SPECIAL PERMIT NO. 169

FOR A RECREATIONAL FACILITY - GOLF COURSE

ON PROPERTY GENERALLY LOCATED

AT N.W. 140TH STREET AND WEST HOLDREGE STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 28, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer; Bleed and Hopkins absent.

Mike DeKalb of Planning staff submitted a letter from the Seward County Road Department requesting that a condition be added that the applicant be responsible for the right-of-way acquisition, design, reconstruction and paving of Holdrege Road in Seward County from 140th Road to 154th Road and from 154th Road from Holdrege to the Interstate 80 apron with design and construction that conforms to Seward County road standards.

Mr. DeKalb also submitted an opinion from the County Attorney which states that even

if the applicant complies with the minimum standards, the special permit can still be denied based on a finding that it would adversely affect the health, safety and welfare of the community. The applicant would have to show that such denial constituted abuse of discretion.

As far as holding the applicant responsible to remedy any future problems of the neighbors, the County Attorney is unaware of any case law on this issue. It would be difficult to administer and/or enforce and difficult to prove what caused the damage. The County Attorney does not recommend placing this type of condition on the special permit.

Proponents

1. Mike Rierden appeared on behalf of the applicant, **Diamond Head Ranch Golf Club LLC**. His client has taken extra steps to address the issues of a golf course in an AG area. Phase I of the environmental impact study shows that there is no evidence or recognition of environmental conditions. They had a wetlands assessment done by HWS because of some delineated wetlands, the results of which found that they could go to Corps for any required 404 permits and to the Department of Water Resources for any requirements. They have received a 404 permit from the Army Corps of Engineers and are in the process of retaining a permit from the Department of Water Resources.

In terms of need, Mr. Rierden submitted information listing golf courses west of Downtown Lincoln, and there are only two public 18-hole courses (Highlands and Pioneers). His client has done an extensive market study and the demand exists in this area for an 18-hole professional championship type golf course.

Mr. Rierden believes there is a misconception or misunderstanding because the proposed golf course is not going to rely on the groundwater for irrigation but will rely 92% on surface water to irrigate the golf course. In other words, of the 100% projected volume of water, only 8% will be augmented by groundwater.

In order to arrive at these calculations, it was explained that you determine the number of acres to be watered. Irrigation Consulting, Inc. calculated that of the 213 acres, 148.5 acres will need to be irrigated. Once you arrive at the acreage, then you determine how much water you will need for this golf course. In the worst case scenario, 100% is basically the situation where they would be utilizing surface water or groundwater if there was absolutely no rain during a 9 month period; then it backs up to 50-75%.

Mr. Rierden submitted information from Blue Valley Drilling on this well that was sunk in February 1990. This is the only irrigation well on the property. The estimated yield of this particular well is 400-700 gal. per minute; it was tested down to 175' feet and

there was no salt discovered.

The Nickel Engineering letter dated July 22, 1999, that was submitted for the record finds that over a 10-year period, the groundwater withdrawals might amount to 350 acre feet or an average of 35 acre feet per year. The last paragraph of that letter suggests that groundwater withdrawals would be offset by groundwater recharge from pond leakage. Again, Mr. Rierden submitted that there will be very little use of the groundwater under this system.

Mr. Rierden also submitted a letter from the owner of the property regarding use of the irrigation well. During the summer of 1993, he ran the irrigation pump 12-15 hours per day, irrigating about 150 acres successfully. It has not been used since because it has not been needed. It never ran dry and never pumped salt.

With regard to irrigation on an agricultural basis as opposed to a golf course, Mr. Rierden suggests that the pumping hours on an agricultural basis is about 12 hours using a total of 288,000 gallons. The total gallons of usage for a golf course on the same 12 hour basis would be 23,570. Over a 10-year period, it would have 35 acre feet per year that would be utilized, which is offset by the 16 acres that would be recharged into the aquifer.

With regard to the route to get to the golf course, Mr. Rierden suggests that it is fairly easy. You either go out West O and cross over the interstate at 126th and down Holdrege; or out I-80 to the interchange west of there and come back on Holdrege Street.

Mr. Rierden agreed with all conditions of approval, with two modifications:

Condition #1.1.3 requires that there be no restaurant; however, Mr. Rierden indicated that there will be a restaurant in the clubhouse. The applicant will comply with requirements of the Health Department, etc.

Condition #1.2.1 is a requirement by the County Engineer that the applicant provide right-of-way and pave Holdrege Street and 140th Street. The applicant has agreed to do the paving, but as far as acquisition of the right-of-way, they don't own all of the property along Holdrege. Therefore, Mr. Rierden requested that a clause be added to Condition #1.2.1, to use their best efforts on the property the applicant does not control and own to acquire the right-of-way.

With regard to the letter from Seward County, Mr. Rierden believes that to be out of the jurisdiction of this Planning Commission. He does not believe that letter is well-founded.

With regard to the opinion of the Lancaster County Attorney, Mr. Rierden agrees. Basically, there must be a legitimate reason to deny this special permit based upon health, safety and welfare type concerns. Mr. Rierden believes the applicant has addressed the water issue sufficiently and has answered all of the environmental issues.

With regard to the water source and nature of the dependence upon any groundwater at all, Steward presumes that the applicant would agree that the surface water depends upon a non-drought condition to be available to begin with, so the percentages would fluctuate. Mr. Rierden agreed, but he does not believe they will fluctuate that much. Not only is it surface water, but it is fed by a number of underground sources.

With regard to annual water usage protection, Steward noted that there are a number of approaches to landscape design that are more or less dependent upon water irrigation. He asked whether the chart submitted by the applicant is based upon the most intensive water use landscaping or whether it accounts for any conservation landscaping such as "zero" landscaping where there is almost no water required. Mr. Rierden believes the chart is a worst case scenario based upon zero types of berming and the usage of various types of grasses. Steward believes it would be helpful to understand the foundation of the estimates on the chart.

2. Tom Strauss, Nickel Engineering, discussed the water usage calculations. There potentially are some drought or heavier usage years and the 8% is an overall projection. In the golf course, there is an addition of two ponds to be located on the facility. These two ponds were not previously located there and the applicant is suggesting that the two ponds will provide a groundwater recharge, which is estimated to be approx. 16 acre feet per year. That is something that would be taken as an average projecting over a 10-year usage period, accounting for higher use and less use requirements on groundwater. The drainage is 1,125 acre drainage area and the method used for calculation was based on the amount of water that would be available and the amount of water recharge was based on the SCS or NRCS engineering field manual for water and dams. They are looking at some surface water being used plus the recharge. It would probably only require 6 acre feet in the month of July from groundwater usage. The rest of the groundwater would be provided from surface runoff and pond retention. There is a "gaining" stream, where unlike some areas in a watershed where you have just the initial runoff condition, the groundwater elevation is generally above the stream and is producing a certain amount of flow into the stream. As far as affecting some of the people downstream, since it's a "gaining" stream, mostly what they will pick up is a lot of stormwater runoff and retention. The area below will have the situation where the stream is gaining and base flow into the stream will continue to be provided as before the development.

In the calculations, it is estimated that over the 10-year period, there would be 350 acre feet of groundwater. This results in an 8% total need for any groundwater withdrawals.

Wilson asked for a comparison between agricultural pumping and golf course pumping. Mr. Strauss stated that it would be eight million gallons per month for agricultural, based upon 12 hours per day for the entire month. Trent Anderson added that to be for the peak months during the summer time. For annual pumping, it would be approximately 24 million gallons. The golf course will be irrigated nine months of the year. 74 acre feet would be taken out with agricultural, and the golf course would only pump about 19 acre feet per year on the groundwater. The golf course pumps less water than the agricultural irrigation.

Bayer asked how the 92% versus the 8% is measured. How do we insure that it does not go over 8% on the average? Mr. Strauss responded that the calculations are some extremely conservative numbers. The actual groundwater recharge is a very conservative number and on a total basis he would be comfortable with the 8%. Bayer then wondered, if you can get 92%, why do you need the 8%? Mr. Strauss' response was, "because of dryer years and there would be need for increased pumping in a dryer year." Some of this is counting on a base flow doming down and that can diminish in a drought type situation. The shorter pumping period also reduces the influence of the well. It confines it to within that area. Shorter pumping periods are better than longer.

Steward believes the question here is having enough evidence that this development is not going to lower the water table in adjacent conditions of pumping from the same groundwater structure. It does not matter whether it is 98% or 50%. The question is, what is the critical usage opportunity from this development to assure us that we are not going to damage the neighbors? Mr. Strauss does not believe there will be any groundwater drawdown. On a 1-hour pumping rate there was no influence of even a temporary groundwater dropdown within 1,000 feet of the well. It is drawing less water than it did on an agricultural irrigation basis. By the time it drops down you will not be able to identify the difference in groundwater elevation in those distances from this well.

3. Roger Strader, Blue Valley Drilling, testified as to salt being introduced if the water level is pulled down in the fresh water, and it is his opinion that it could be. The salt water and fresh water are separated by an impermeable clay layer. It shouldn't bring salt water in, but it might. Nobody can answer this question truthfully. However, it is Mr. Strader's opinion that it will not bring salt water in. If they are going to use mostly surface water and 8% groundwater, there probably should be no problem. They won't be drawing enough fresh water out to hurt anything. Mr. Strader drilled a well in this area. He knows the area good enough.

Opposition

1. Mark Hunzeker appeared on behalf of **Merle and Caroline Jahde**. He just received Mr. Rierden's report and he believes there are a lot of unanswered questions and would

like the opportunity to review the information submitted today. He believes the County Attorney indicates appropriately that a decision to approve or deny should be based on testimony and evidence and he has not had the opportunity to review the information. Mr. Hunzeker would appreciate additional time before a decision is made. He notes that the well test information is dated in 1989 and 1990. It seems that at a minimum there should be some more current information, and there is some strong disagreement with the numbers that are being used to compare agricultural versus golf course usage. He needs additional time to rebut those numbers.

2. Dick Hedges testified in opposition. He has drilled wells for 41 years in this area and disputes the report that there will be a significant recharge of the underground water to pond. He trusts Roger Strader. In his opinion, Mr. Hedges does not believe there will be any significant recharge of the underground water due to the impermeableness of the blue clay that they drill through. Mr. Hedges personally knows that an irrigation well can draw down where you have a thin formation, as much as 4-5 miles away. He is not worried about drawdown per se, but he believes it could be alleviated easily by shutting the golf course wells down. But once the salt comes in, it will take a number of years before that salt will be gone. He is curious if this water was actually tested by the state as far as salt content.

3. Melvin Lostroh, 13701 W. Adams, testified in opposition. He remembers the 30's when there was no groundwater and the wells went dry. When they were pumping water when they put the irrigation well in, he and his neighbor had to put another link on their wells. If he could irrigate, he would because farming is his living, but he does not believe this area can handle something like a golf course.

Bayer asked Mr. Lostroh to expand upon his comment "if he could irrigate". Mr. Lostroh has not attempted to irrigate, but he knows they cannot because others have attempted it.

4. Melvin Deinert, 1851 N.W. 98th, testified in opposition. He wants to know how they are going to pump for 9 months on less water than for agricultural. In a dry year, there is no surface water. He farms ground in this area and the creek is dry a lot of times in the summer. His dad dug an irrigation test well a few years back and there was no water for irrigation.

5. Kevin Lostroh, 13651 W. Adams, testified in opposition. With regard to the surface water and pond recharge, in dry years the ponds will go dry so how do you recharge from a dry pond? He has not had an opportunity to review the information submitted today. What if their estimates are wrong?

6. Dave Wacker, 2600 N.W. 126th, testified in opposition. He is also a member of the church at 2400 N.W. 126th, the parcel adjacent to the proposed golf course. He understands that another well will be drilled.

7. Todd Bohlender, 12001 W. Wendy Lane, testified in opposition. Is that golf course going to be split between two parcels? Will they drill another well? Mr. Bohlender lives 1/4 mi. off 126th on a small acreage. His well went in at 125 feet and they hit salt water at about 50'. He had to put a flow restriction on it because it will run dry. About 600' to the east is a dairy farm. They hit salt in that well. And another neighbor hit some salt. He is concerned about draw down. With the closure of the bridge on West Hwy 6, W. Holdrege was traveled extensively and it got to be very tenuous. It needed to be expanded and got beat up real bad. He is concerned about the road from N.W. 126th to 140th.

Steward posed a question to Mark Hunzeker. The more information we get, the more critical this situation becomes. The opinion by the County Attorney puts clear responsibility on the Planning Commission to make a report regarding the effect of such proposed building or use upon the character of the public interest. While the Planning Commission is not in the process of making a report, they are in the process of making informed decisions. To what extent are Mr. Hunzeker's clients prepared to come back with empirical evidence. He is concerned with getting more deeply into information that can be contested. Mr. Hunzeker stated that he would have to speak with his client about how much they are willing to invest in additional information, but he does not think it is necessarily the case that opinion testimony from experts is any different than the information the Commission has. What stands out is that there is a consistent assumption that only 8% of the total water is going to come from groundwater. That seems to be an average and they speak of an average of 35 acre feet of water per year being taken out of the groundwater; however, clearly, when you talk about averages, there are times when it will be much higher and times when it will be lower. It is the higher years that have the potential to cause serious problems. Steward believes that the experiences of the neighbors are more or less accurate statements, also. Steward is asking if the opposition is willing to go to the extent to bring evidence rather than opinion. Mr. Hunzeker could not say absolutely yes or no, but he believes that they will probably be interested in assembling some additional scientific evidence as well as expert testimony.

8. Edna Whitney, 13310 W. Holdrege, testified in opposition. She lives between 126th and 140th. She just had a well drilled in February and she has a neighbor that tried to irrigate their ranch and it cut down their water pressure. Will this affect her in any way? They plan on putting a tunnel under the road. She lives between two hills. The ditch in front of her house by the road fills very quickly. What will this do to the tunnel they are going to put under the road?

Bayer clarified that they would not be taking water from the stream just west of her home.

9. Paul Jacoby, 13200 W. "O", and his father testified in opposition. They own land next to Diamond Head Ranch. Mr. Jacoby does not believe the creek is sufficient. He

wanted to put irrigation pipe east of the proposal and there is not enough water to irrigate. Their creek has natural springs and it is running but it is low. His father stated that they have pastureland there rented by Don Minzel and they have dairy cattle in there where the underground springs come in, and that is good for the dairy cows. There might be such a thing as salt water in the creek. This planet earth has got just so much land and it would be a good idea to keep the agricultural and pastureland for humanity. All of these people are against this golf course. We have about 15 golf courses in Lancaster County. We don't need any more golf courses even on the west side of town. They might have to drive further, but let's keep this land as pasture with its habitat and farming land for dairy cows and for humanity. There is no irrigation in the area. If they start irrigating, they will use more than 8% from groundwater. If they dry our wells up, what are we going to do?

10. Larry Minzel, 11800 W. Holdrege, testified in opposition. Right now the springs are running good, but he has seen times when all the creeks and springs have gone dry in dry years. If the water table is down, the springs in those creeks will be bone dry. If it is a spring fed creek, it will go dry. There will be no water for the cattle in the pasture.

Response by the Applicant

Mr. Rierden clarified that there will not be a new irrigation well. This golf course is on two parcels. W. Holdrege Street will be improved and paved to county standards. The 8% is an average but that is worst case scenario during a 9-month period where there is absolutely no rain. This is not prime farm ground and does not take away from the agricultural stock. People out there simply do not want to have a golf course. The applicant has demonstrated, addressed and touched all of the issues – environmental, wetlands, water. The opposition has had the same two weeks to bring forward empirical evidence like the applicant has done. Mr. Strauss has based all of his findings upon the same sources as anyone else. Mr. Rierden requested that the Commission not delay this application but move it ahead to the County Board. The applicant complied with the request for evidence regarding the water.

Mr. Strauss offered that they used a very conservative approach in considering the development as far as recharge and available water by using the SCS standards for the area. Rather than this property influencing someone a distance away, it may be that the neighboring properties have the geological conditions that present the problem more than the pumping on the proposed golf course property.

Wallace asked Mr. Rierden whether the applicant has been in dialogue with the neighbors during this project. Mr. Rierden stated that as far as the information submitted today, they were gathering it up to today. As far as dialogue with the neighbors, they sent letters to the neighbors explaining the proposal and suggested that the owner be contacted with any questions. Mr. Rierden has had one contact.

Wallace further inquired of Mr. Rierden whether he thinks it is important to talk with these people about the impact. Mr. Rierden is willing to do that and would have as many meetings with them as possible. However, he detects that it is the golf course use that is the issue rather than the water.

Bayer noted that if the spring has only dried up once in 20 years, why does the golf course need groundwater? Mr. Rierden's response was that the well exists. Mr. Strauss suggested that potentially there may be less usage. They have been working to present the worst case scenario. Even if the spring is low, it does affect the quantity of water so there can be an interim amount of time that you may have to irrigate, but it may not be as extensive as estimated.

Steward moved to continue public hearing and administrative action in two weeks, seconded by Duvall.

Steward believes that the more we get into this information, the more interesting and the greater pressure that it puts on this Commission. We know that there is a high degree of variance of water resources for human consumption in this county, and that the subsoil structure varies greatly and the water flow and opportunities vary greatly. We also know that water is going to be one of our most precious resources in the future, and he is not comfortable, especially based upon the County Attorney's opinion, with the background he has to vote for or against the project. He believes we need recreation for the community, but we also owe it to the other people around this project to be as sure as possible that we are not getting a project that is going to damage their personal interests. He thinks it is valuable that Mr. Hunzeker has appeared on behalf of a neighbor and he believes the two weeks will give the opposition the opportunity to rebut the information that has been presented today by the applicant.

Wilson is of the opinion to move the application on to the County Board. This gives them another three weeks to negotiate and work on information.

Schwinn is also against holding this over two more weeks. One of the most telling things is that the neighbors are clearly opposed to the golf course.

But, Duvall believes the neighbors have the right to show a concern. Time is a minor issue. All issues need to be addressed.

Motion for continued public hearing and administrative action on August 11, 1999, carried 4-3: Wallace, Duvall, Steward and Bayer voting 'yes'; Wilson, Schwinn and Krieser voting 'no'; Bleed and Hopkins absent.

Bayer suggested that this is the chance for the neighbors to rebut the information submitted today.

ANNEXATION NO. 99006

and

PRELIMINARY PLAT NO. 99010,

LEE'S PLACE,

ON PROPERTY GENERALLY LOCATED

AT S. CODDINGTON AVENUE AND WEST VAN DORN STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: July 28, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Du7vall, Steward and Bayer; Bleed and Hopkins absent.

Steve Henrichsen of Planning Dept. submitted two letters for the record. The staff, at the request of the Planning Commission, contacted LPS in regards to Roper Elementary School being within 1/4 mile of the application. Larry Hennings of LPS has submitted a letter stating that LPS has reviewed the plat and, while they are

concerned about increased growth in the schools, it has never been the School District's position to say that growth should be stymied because of insufficient space in classrooms. Busing is provided and they can transfer students.

The second letter is from Bill Blake on behalf of the property owner to the east of Lee's Place, Mary Vestecka. Vestecka's Villa Van Dorn is being platted into single family lots. They do not object to this development but yet they feel that the developers of Lee's Place should have to pay a portion of the costs for the sewer line that were incurred to extend sewer line to Vestecka's Villa Van Dorn. Mr. Henrichsen stated that Dennis Bartels of Public Works and the City Law Department have reviewed the Annexation Agreement for Vestecka's Villa Van Dorn and concur that the city is under no obligation to charge Mr. Krueger additional costs and does not believe it is appropriate.

Proponents

1. Rick Krueger submitted a letter indicating that the developer and Mrs. Dineen have reached agreement with regard to the Dineen property, which was the purpose of this continuance.

There was no testimony in opposition.

Public hearing was closed.

ANNEXATION NO. 99006

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: July 28, 1999

Duvall moved approval, seconded by Wallace and carried 7-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer voting 'yes'; Bleed and Hopkins absent.

PRELIMINARY PLAT NO. 99010, LEE'S PLACE

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 28, 1999

Duvall moved approval, with conditions, seconded by Schwinn and carried 7-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer voting 'yes'; Bleed and Hopkins absent.

ANNEXATION NO. 99011
TO ANNEX PROPERTY GENERALLY
LOCATED AT SOUTH 14TH STREET AND
MOCKINGBIRD LANE NORTH.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 28, 1999

Members present: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer; Bleed and Hopkins absent.

Planning staff recommendation: Approval.

Steve Henrichsen of Planning staff submitted a letter from Keith Herbster, 1201 No. Mockingbird Lane, in opposition.

Mr. Henrichsen advised that this proposal annexes Lazy Acres and three other houses and undeveloped property.

Mr. Henrichsen submitted a memorandum from the Planning Department containing a cost estimate for the water and sewer. It has been determined that the costs per lot will be \$5,000 to \$7,500 for the sewer, and the same amount per lot for water line, based upon information available today. There are a lot of factors that could adjust those estimates based upon adjacent developments. Water and sewer improvement districts are not requested at this time and are not reviewed by the Planning Commission.

The memorandum also listed some of the other acreage annexations that have occurred since 1994, the last 10 of which involved acreage residential lots, all 10 being approved by the City Council and all 10 were recommended for approval by the Planning Commission. These were very similar in characteristics. The property is zoned R-1, which is urban residential. It meets all of the policies and criteria of the Comprehensive Plan.

Bayer recalled that the Planning Commission just denied an annexation of acreage lots south of Pine Lake. Mr. Henrichsen advised that the Commission recommended that that annexation be placed on pending until the Campbell property comes forward. The annexation of two residential lots at 93rd & Old Cheney ha not been forwarded to the City Council yet.

Steward expressed appreciation for the additional information on costs, which should be a matter of information to anyone caught in this circumstance. He also appreciates the additional information on other annexations. However, he would like

to hear the staff's opinion as to whether we are entering territory that requires a more specific thought and approach as we are bumping against more and more of these. The alternative that we keep saying separates Lincoln from other municipalities is the ability to resist SID's and not get caught in the bind of assuming debt, etc. Steward is concerned that we don't find ourselves by accident having to deal with that issue. On the other hand, he is concerned that we have a more deliberate and more fair way of dealing with property owners on acreages that they thought were never going to be a part of the city. Mr. Henrichsen observed that it is well known that the city staff would not support SID's. To the particulars of acreage development, over the past four years, the staff has tried to improve the process of annexation in terms of having open houses, trying to prepare information in advance as to cost estimates. The staff has worked with LPS to try to address issues in regard to the Waverly bond issue and have made provisions to reduce acreage owners' costs in that regard. The staff has heard the property owners' concerns about not wanting to have street lights or sidewalks and the desire to retain their paving, and the city has supported these issues. The city has not changed the zoning with any of these areas; the zoning remains AGR and that is a very important part of the properties' character. The staff believes that the character of the area has been maintained. However, there are certain some things that will cause pressures on these acreage lots such as future sewer and water district assessments. The pressure of having to pay that additional cost will certainly be one that may cause some property owners to have to sell or subdivide their property. At the time the sewer and water districts do come forward, that is the best time to address those costs. In the case of Mar-Ma-Ra-Lo, for example, the developer contributed more than \$40,000 to help reduce the cost for the sewer improvements for the adjacent acreage subdivision. Mr. Henrichsen believes the staff can certainly do more to improve the process, but he also believes that at this point the staff has a pretty good process involved with acreages. It kind of comes down to a fundamental issue that a lot of these areas would like to be outside the city limits, but Mr. Henrichsen believes the Comprehensive Plan appropriately points out that we cannot jog the city limits in and around areas, allowing some people to be outside of the city limits for the only purpose that they would rather not be in the city limits. Some of the things that we request these people to do are the same things that we request of every other of the 215,000 citizens of the City of Lincoln; that is, to pay the City of Lincoln property tax; to have their streets served the same way; to receive the same kind of fire and police service, etc. While they may complain that the snow plows in the county might get there sooner than the city snow plows, they will be treated by the city snow plows the same as anyone else in the city. Mr. Henrichsen believes the city does the best it can to try to compromise city standards to serve these areas.

Steward believes there is another dimension of this and that is, doing a better job with the Comprehensive Plan on acreage designation to begin with. Mr. Henrichsen agreed.

Schwinn moved approval, seconded by Wilson.

Schwinn commented that the Comprehensive Plan talks about one community and contiguous growth, and if there was ever a place where those two things exist, this is the one spot that he would say qualifies more than any of the others.

Motion for approval carried 7-0: Wilson, Schwinn, Wallace, Krieser, Duvall, Steward and Bayer voting 'yes'; Bleed and Hopkins absent.

There being no further business, the meeting was adjourned at 4:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 11, 1999.

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